IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 2444 of 2003
to
FIRST APPEALNo 2446 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE KSHITIJ R.VYAS
and
HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

THAKOR JUHAJI VISAJI

Versus

SPL.LAQ OFFICER

Appearance:
MR AJ PATEL for appellants
MR HL JANI, AGP for Respondents

CORAM : HON'BLE MR.JUSTICE KSHITIJ R.VYAS
and
HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 15/04/2004

COMMON ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE K.S.JHAVERI)

1.1 The present appeals, filed under Section 54 of the Land Acquisition Act, 1894 read with Section 96 of the Code of Civil Procedure, 1908 are directed against the common judgment and award dated 5th September 2000

passed by the learned Extra Assistant Judge, Mehsana in L.A.R. Nos.1264/95 to 1270/95 awarding compensation to the claimants. This Court, in another group of appeals, being First Appeal Nos. 2548 of 2001 to 2550 of 2001 preferred against the same award, had partly allowed the said appeals on 19th October 2001.

1.2 In the above cases, the Reference Court had held that the claimants are entitled to the market price at Rs.40/- (Rs.2.70 ps. per sq.mtr. as already awarded by the Special Land Acquisition Officer and Rs.37.30 ps. per sq.mtr. by way of additional compensation and in some cases, Rs.4.05 ps. per sq.mtr. the compensation already awarded by the Special Land Acquisition Officer and Rs.35.95 per sq.mtr. by way of additional compensation). The appeals preferred by the claimants are restricted to the claim of Rs.65/- only.

3. The facts briefly leading to the present proceedings are as under:

3.1 The notification under Section 4 of the Land Acquisition Act, 1894 (for short, 'the Act') was gazetted on 19.1.1991 for acquisition of lands situated at village Ganpatpura, Tal. Kalol, Dist. Mehsana for the purpose of Narmada Canal Project (Narmada Dholka Branch). after following the procedure laid down in the Act, the Special Land acquisition Officer made an award under Section 11 of the Act on 7.2.1994, awarding the compensation at the rate of Rs.2.70 per sq.mtr. in some cases and Rs.4.05 ps per sq.mtr. in some cases. The claimants were not willing to accept this offer, however, they accepted this amount with objection. The claimants submitted the applications under Section 18 of the Act and therefore, the Reference Court was required to determine the market price of the land on the date of notification published under Section 4 of the Act.

3.2 On behalf of the claimants, one Ramabhai Valjibhai Rabari, Exh.9 was examined, whose evidence reveals that he is engaged in the agricultural operation. He has given details about the lands acquired. With regard to the site of the lands, he has pointed out that the village Ganpatpura is situated very near to Gandhinagar, Ahmedabad and Kalol at a distance of 7, 10 and 10 kms. respectively. The biggest fertilizer unit of IFFCO is situated at a distance of 4 kms. Sabarmati-Kalol Highway (National Highway No.8) is just at a distance of 4 kms. from the village Ganpatpura. Gota is at a distance of 5 kms. Gota is a part of Ahmedabad (High Court is situated at Gota-Sola). He has

further stated that Gandhinagar is 3 kms. from Shertha where there are several factories. This witness has further stated that at a distance of about 5 kms. there is Nirma Institute, Sanctuary, Gurukul etc. He has further stated that the village has facilities such as lights, water, telephone, bus etc.

3.3 About the lands, he has pointed out that the lands were agricultural lands and they were cultivating crops such as castor seeds, jira, millet etc. About the income, he has stated that they used to earn the income to the tune of Rs.15,000/- to Rs.20,000/-. To substantiate his say, he has placed on record the village forms 7/12 at Exh.12 to 25. He has also stated on oath that some lands situated in the same village Ganpatpura were acquired and the claimants in that case were offered compensation at the rate of Rs.40/- per sq.mtr. by the Reference Court, against which appeals were preferred which were ultimately dismissed. He has produced copies of judgments vide Exhs. 26 and 27. The lands situated at village Jaspur were also acquired. He has placed on record the site of village Ganpatpura Exh.31. With regard to nature, quality and fertility of the lands, he has stated that the lands of Ganpatpura are superior than the lands of Jaspur.

3.4 In cross examination, he has stated that Talati is required to indicate in the village form 7/12 about the cultivation. He has fairly stated that they do not keep accounts. He has denied the suggestion that the lands are inferior and that the lands are less fertile. He has denied the suggestion that he is not taking three crops in a year. In further cross examination, he has stated that it is incorrect to say that the lands can not be used for agricultural operation and have become useless. He has denied the suggestion that about 50% of the amount is required towards the expenditure. He has denied the suggestion that for getting compensation, he is giving false evidence.

4. In view of the fact that the lands were acquired earlier situated at village Ganpatpura, it was fairly stated before the Court that price is required to be determined on the basis of the price fixed earlier.

5. In the appeals before the Division Bench of this Court, a copy of the judgment delivered in First Appeal Nos.1322 of 1999 to 1332 of 1999 was placed. In that decision, (Coram: R.Balia, J. as his Lordship then was and Ms.R.M.Doshit, J.) on 17.1.99 dismissed the appeals by a detailed judgment and held that the amount of

compensation awarded at the rate of Rs.40/- per sq.mtr. calls for no interference.

5.1 In that case, the notification was published under Section 4 of the Act on 13.12.85 and the Reference Court considered the evidence placed on record and also considered the awards for the lands situated at Jaspur. For the lands situated at Jaspur, for which notification under Section 4 was published on 3.12.85, the claimants were held entitled to get Rs.72/- per sq.mtr. It was also submitted that since the compensation determined by the High Court in respect of the lands of the same nature of the adjoining village was at a higher price than the compensation awarded by the Reference Court in this case, no interference was called for. It is required to be noted that there cannot be straight-jacket formula. The claimants are entitled to get the compensation considering the nature and fertility of the lands in question. In that case, apart from the instances on the basis of the use also, the Court arrived at a conclusion that Rs.40/- per sq.mtr. is not required to be disturbed.

6.1 It is required to be noted that if the price is fixed in a particular year and in the absence of any other sale instance, price is required to be determined in subsequent years. Ordinarily, 10% increase in price must be given. There is no dispute about this proposition. Considering this aspect, price is required to be determined.

6.2 It is also required to be noted that in the case of Thakarsibhai Devjibhai and ors. v. Executive Engineer, Gujarat and anr., AIR 2001 SC 2424 (2001 AIR SCW 2417), the Apex Court pointed out about the distance and the difference between the lands acquired subsequently. The Apex Court pointed out as under:

> "So far as the other question of distance between the two classes of land, that by itself cannot derogate the claim of the claimant unless there are some such other materials to show that quality and potentiality of such land is inferior."

The Court further pointed out as under:

> "No evidence has been led on behalf of the State to find difference between the two. In view of this, the inference drawn by the High Court for reducing Rs.10/- per sq.mtr. cannot be sustained."

Thus, in the instant case, we find from the record that the lands were also acquired earlier. It is also required to be noted that in view of passage of time, the cultivators are provided with equipments and better facilities which would help them to have better yield. Considering the price factor, 10% of rise per year is required to be given. In view of what is stated hereinabove, as the lands were acquired at village Ganpatpura for which notification under Section 4 of the Act was published on 31.12.85 and the claimants were awarded compensation under the Act, in our opinion, considering 10% increase per year for the lands situated at village Ganpatpura, the claimants in these cases must be held entitled to get Rs.62/- per sq.mtr. In the result, the appeals are required to be allowed. Our attention was drawn by the learned AGP to sub-para 6 of para 23 of the award with regard to entitlement of interest. It is required to be stated that the claimants are entitled to get interest on the additional compensation at the rate of 9% per annum from the date of taking possession and after the completion of first year, the claimants shall get 15% per annum till realisation. In the instant case, the possession was taken prior to issuance of notification by the State Government and therefore, this direction is given.

6.3 Learned Advocate for the claimants urged that the claimants are also entitled to interest on solatium. He submitted that in view of pronouncement of the judgment by the Apex Court in the case of SUNDER vs. UNION OF INDIA, reported in AIR 2001 SC 3516, 2001 (7) SCC 211, 2001 SOL Case No.551, the claimants are also entitled to interest on solatium. The Apex Court in the said judgment pointed out as under:

"27. We think it useful to quote the reasoning advanced by Chief Justice S.S. Sandhawalia of the Division Bench of the Punjab and Haryana High Court in State of Haryana vs. Smt. Kailashwati and ors. (supra).

"Once it is held as it inevitably must be that the solatium provided for under Section 23(2) of the Act forms an integral and statutory part of the compensation awarded to a landowner, then from the plain terms of Section 28 of the Act, it would be evident that the interest is payable on the compensation awarded and not merely on the market value of the land. Indeed the language of S.28 does not even remotely refer to market value

alone and in terms talks of compensation or the sum equivalent thereto. The interest awardable under Section 28 therefore, would include within its ambit both the market value and the statutory solatium. It would be thus evident that the provisions of Section 28 in terms warrant and authorise the grant of interest on solatium as well."

"28. In our view the aforesaid statement of law is in accordance with the sound principle of interpretation. Hence, the person entitled to the compensation awarded is also entitled to get interest on the aggregate amount including solatium. The reference is answered accordingly."

7. Learned Advocate for the appellants submitted that the Reference Court was not right in not awarding interest under Section 23(1-A), 23(2) and 28 of the Act, as per the decision of the Apex Court in the case of Nagpur Improvement Trust v. Vasant Rao and ors., reported in AIR 2002 SC 3499, 2002 (7) SCC 529, 2003(1) GLH 140.

8. In our view, as per the decision of the Apex Court in the above case of Nagpur Improvement Trust v. Vasant Rao and ors. (supra), the claimants are entitled to interest on the amount awarded under Section 23(1-A), 23(2) and 28 of the Act.

9. In the result, the appeals are allowed in part. Accordingly the claimants should be given the benefits under the Statute including the interest on solatium. There shall be no order as to costs.

(Kshitij R. Vyas, J.)

(K.S. Jhaveri, J.)
Sreeram.